

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

July 12, 2005

IN RE:

**PETITION OF ON-SITE SYSTEMS, INC. TO
EXPAND ITS SERVICE AREA TO INCLUDE
AN AREA KNOWN AS SEVIER COUNTY**

**DOCKET NO.
03-00329**

**PETITION OF TENNESSEE WASTEWATER
SYSTEMS, INC. TO EXPAND ITS SERVICE
AREA TO INCLUDE AN AREA KNOWN AS
SEVIER COUNTY**

**DOCKET NO.
04-00045**

**ORDER GRANTING MOTION TO REVIEW INITIAL ORDER OF
HEARING OFFICER ISSUED ON FEBRUARY 4, 2005**

This matter came before Chairman Pat Miller, Director Sara Kyle and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this Docket, at a regularly scheduled Authority Conference held on March 14, 2005 for consideration of Director Jones's *Motion to Review Initial Order of Hearing Officer Issued on February 4, 2005* ("Motion to Review").

On February 4, 2005, the designated Hearing Officer in the above-captioned consolidated dockets issued an *Initial Order Approving In Part, and Denying In Part, Petition to Amend Certificate of Convenience and Necessity* ("Initial Order"). Subsequently, on February 22, 2005 Director Jones issued the *Motion to Review* pursuant to Tenn. Code Ann. § 4-5-315 (2004). Specifically, Director Jones moved that the Authority address the following issues:

1. Did the Hearing Officer correctly determine that “it is reasonable to construe the term ‘utility water service,’ as used in Tenn. Code Ann. § 6-51-301(a)(1998) as including sanitary sewer service”?
2. Did the Hearing Officer correctly determine that granting a certificate of convenience and necessity (“CCN”) places “additional legal and administrative burdens on private companies who later seek to provide service in the area covered by the CCN”?

According to the *Motion to Review*, the Hearing Officer’s resolution of the first issue is different from the conclusions set forth in Opinion 04-134 of the Tennessee Attorney General. In that Opinion the Attorney General reviewed Tenn. Code Ann. § 6-51-301 (1998) and determined that “a court is likely to conclude that the term ‘utility water service’ as used in Tenn. Code Ann. § 6-51-301(a) (1998) does not include a sanitary sewer system.”¹

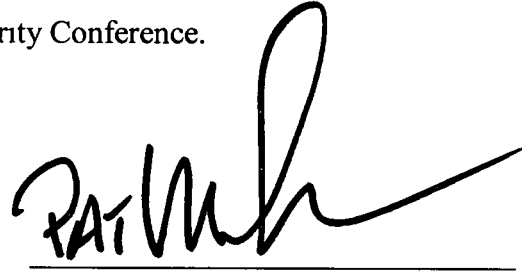
The *Motion to Review* states that the second issue should be reviewed by the panel to avoid any confusion as to the future application of Tenn. Code Ann. § 65-4-203 (2004). According to the *Motion to Review*, the Hearing Officer’s *Initial Order* might be interpreted as determining that Tenn. Code Ann. § 65-4-203 (2004) applies when a public utility attempts to obtain a CCN for an area that is included within the certificated area of another public utility regardless of whether the facilities of the public utilities would be in competition with each other.

The voting panel considered the *Motion to Review* at a regularly scheduled Authority Conference held on March 14, 2005. At the conference, Director Jones noted that, in his opinion, both of the issues in question were matters of first impression and reiterated several of the points made in the *Motion to Review*. After hearing the remarks of Director Jones and considering the *Motion to Review*, the panel voted unanimously to review the *Initial Order* and adopted the schedule for briefs and oral argument set forth in the *Motion to Review*.

¹ Tenn Op. Atty Gen No 04-134, 2004 WL 2077452, p 2 (August 20, 2004)

IT IS THEREFORE ORDERED THAT:

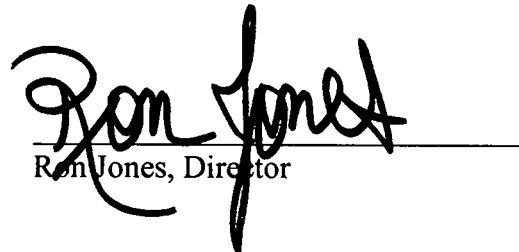
1. The panel review the two issues set forth in the *Motion to Review Initial Order of Hearing Officer Issued on February 4, 2005*.
2. Any party desiring to file a brief shall do so no later than March 28, 2005. Oral arguments will be held at the April 4, 2005 Authority Conference.

A handwritten signature in black ink, appearing to read "Pat Miller", written over a horizontal line.

Pat Miller, Chairman

A handwritten signature in black ink, appearing to read "Sara Kyle", written over a horizontal line.

Sara Kyle, Director

A handwritten signature in black ink, appearing to read "Ron Jones", written over a horizontal line.

Ron Jones, Director